

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE ANNUITY, WELFARE, APPRENTICESHIP SKILL
IMPROVEMENT & SAFETY FUNDS of the
INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 15, 15A, 15C and 15D, AFL-CIO, by its TRUSTEES
JAMES T. CALLAHAN, ROBERT SHAW, RUSSELL
SHAW and CHRISTOPHER WARD, and JOHN and
JANE DOE, as Beneficiaries of the ANNUITY, WELFARE and
APPRENTICESHIP SKILL IMPROVEMENT & SAFETY
FUNDS of the INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 15, 15A, 15C and 15D, AFL-CIO,

**NOTICE OF
MOTION FOR
DEFAULT JUDGMENT**

08-CIV-2935 (IBC)

Plaintiffs,

-against-

METRO FOUNDATION CONTRACTORS, INC.,

Defendant.
-----X

PLEASE TAKE NOTICE, that upon the Affidavit of JAMES M. STEINBERG, ESQ., sworn to on the 30th day of April, 2008, Plaintiffs' Statement of Damages, and upon all of the prior papers and proceedings heretofore served and had herein, Plaintiffs, by their attorneys BRADY McGUIRE & STEINBERG, P.C., will move this court, at the United States Courthouse located at 500 Pearl Street, New York, New York, before the Honorable Irving Ben Cooper, at a date and time to be scheduled by the Court, for a judgment of default against Defendant METRO FOUNDATION CONTRACTORS, INC. pursuant to Rule 55(a) of the Federal Rules of Civil Procedure as follows: (a) an Order requiring the Defendant to cooperate in the performance of an audit by Plaintiffs, by providing all requested books and records which are relevant to whether there has been a deficiency in the required fringe benefit contribution payments; (b) an Order requiring the Defendant to pay any determined deficiency within thirty (30) days of receipt of

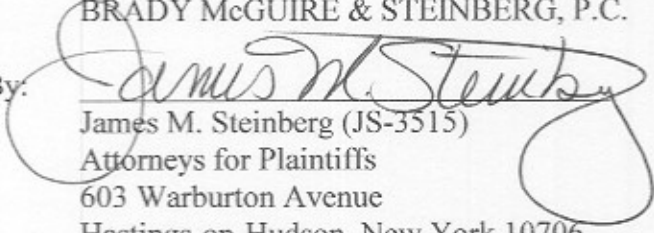
notice of the deficiency from the Plaintiffs along with (c) interest from the date on which such deficiency came due, at the prime rate of 5.25% plus one percent and (d) statutory damages in the form of interest from the date on which such deficiency became due at the prime rate of 5.25% plus one percent of the scheduled deficiency amount; (e) an Order requiring the Defendant to pay the costs of said audit; and (f) an Order awarding the Plaintiffs attorneys' fees in the amount of \$1,638.75, along with costs in the amount of \$525.00, together with such other and further relief as this Court may deem just, proper and equitable.

Dated: Hastings-on-Hudson, New York
April 30, 2008

Respectfully submitted,

BRADY McGUIRE & STEINBERG, P.C.

By:



James M. Steinberg (JS-3515)
Attorneys for Plaintiffs
603 Warburton Avenue
Hastings-on-Hudson, New York 10706
(914) 478-4293

TO: METRO FOUNDATION CONTRACTORS, INC.
144-45 156th Street, 2nd Floor
Jamaica, New York 11434

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DEFAULT JUDGMENT

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Plaintiffs,

-against-

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Defendant.
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This action having been commenced on March 20, 2008 by the filing of the Summons and Complaint, and a copy of the Summons and Complaint having been personally served on the Defendant METRO FOUNDATION CONTRACTORS, INC. on April 9, 2008, by a Process Server, personal service on Donna Christie, an Authorized Agent in the Office of the Secretary of State of the State of New York, and proof of service having been filed on April 18, 2008 via the ECF System, and the Defendant METRO FOUNDATION CONTRACTORS, INC. not having answered the Complaint, and the time for answering the Complaint having expired, it is,

ORDERED, ADJUDGED AND DECREED: That the Plaintiffs have judgment against the Defendant as follows:

(a) That the Defendant shall cooperate in the performance of an audit by Plaintiffs' representative, by providing the following payroll records for the period of August 8, 2007

through April 30, 2008: Tax Forms 941s; Quarterly Payroll Tax Forms a/k/a NYS-45 Tax Forms; Corporate Payroll Records (including information identifying hours paid and gross wages); Cash Disbursements Records; Tax Forms W-2s; Payroll Reports (provided to the union or fund office, if applicable); and Canceled Checks, for the express purpose of determining whether there has been a deficiency in the required fringe benefit contribution payments to the Plaintiff Trust Funds;

(b) That the Defendant shall pay any determined deficiency, as identified in the report to be issued by the Plaintiffs' representative, within thirty (30) days of receipt of notice of the deficiency from the Plaintiffs pursuant to 29 U.S.C. Section 1132(g)(2)(A), along with interest from the date on which such deficiency came due, at the prime rate of 5.25% plus one percent and statutory damages in the form of interest from the date on which such deficiency became due at the rate of 5.25% plus one percent, pursuant to 29 U.S.C. Sections 1132(g)(2)(B) and (C)(i), respectively;

(c) That the Defendant shall also pay the costs of said audit pursuant to 29 U.S.C. Section 1132(g)(2)(E); and

(d) That the Plaintiffs are awarded attorneys' fees in the amount of \$1,638.75, along with costs in the amount of \$525.00, for a total liquidated amount of \$2,163.75 pursuant to 29 U.S.C. Section 1132(g)(2)(D).

ORDERED that the Judgment rendered by the Court on this day in favor of the Plaintiffs be entered as a final judgment against Defendant METRO FOUNDATION CONTRACTORS, INC. and the Clerk of the Court is directed to enter such Judgment forthwith.

Date: New York, New York
May __, 2008

SO ORDERED:

The Honorable Irving Ben Cooper U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CLERK'S CERTIFICATE

08-CIV-2935 (IBC)

Plaintiffs,

-against-

METRO FOUNDATION CONTRACTORS, INC.,

Defendant.
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I, J. MICHAEL McMAHON, Clerk of the United States District Court for the Southern District of New York, do hereby certify that this action was commenced on March 20, 2008 by the filing of the Summons and Complaint, and a copy of the Summons and Complaint was personally served on the Defendant METRO FOUNDATION CONTRACTORS, INC. on April 9, 2008, by a Process Server, personal service on Donna Christie, an Authorized Agent in the Office of the Secretary of State of the State of New York, and proof of service was filed on April 18, 2008 via the ECF System.

I further certify that the docket entries indicate that the Defendant has not filed an answer nor otherwise moved with respect to the Complaint herein. The default of the Defendant is hereby noted.

Dated: New York, New York
May 6, 2008

J. MICHAEL McMAHON
Clerk of the Court

By:


Deputy Clerk